IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9250 OF 2007

Smt.Maimunnisa Muslimli Sayyed
and Ors. ...Petitioners

Versus

Shri Shamkant Pandurang Kadu
and Ors. ....Respondents

Mr.V.G.Mujumdar Adv. for the petitioners.
Mr.Vanarse, Adv. for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

18th December, 2007.

P.C. :

1. This is a Writ petition to challenge the order below Exhibit-38 in Civil Appeal no. 381 of 2003. The petition is by the original appellant. The request was to issue witness summons to the concerned officer of the Maharashtra Pollution Control Board to bring the

record in respect of the inspection carried out for ascertaining the sound pollution with regard to House no. 1223, Kasba Peth, Pune.

2. While it is true that the earlier application Exhibit-10 preferred by the petitioner appellant to lead additional evidence has been rejected by the lower Appellate Court, yet, another application (Exh-29) is allowed and the petitioner/appellant's request for production of the letter of the Maharashtra Pollution Control Board, copy of which is annexed to this petition is granted. It is undisputed before me that the petitioner has relied upon the same. The letter of the Pollution Control Board is on record of the lower Appellate court. In such circumstances, the petitioner appellant may have prayed once again to summon a witness but that was with regard to production of Inspection Report. In my view, even if these were distinct matters, inasmuch as the earlier was for the production of the letter and later on the request is to summon the record of inspection, yet, in the peculiar facts of this case, when the letter of the Maharashtra Pollution Control Board was already taken on record,

the lower Appellate Court ought to have permitted parties to argue on the contents thereof. It is nobody's case that the letter has not been produced from proper custody. The letter has been produced on record of the proceedings of the lower Appellate Court from the proper authority, namely, Maharashtra Pollution Control Board. In such circumstances, allowing the letter to be taken on record and permitting both sides to argue their case with regard to the contents thereof, this petition can be disposed off.

3. Accordingly, it is directed that the lower Appellate Court shall permit both sides to argue with regard to the contents of the letter of the Maharashtra Pollution Control Board which has been taken on record pursuant to the order passed below Exhibit-29. All contentions in that behalf are expressly kept open. The Appellate Court to proceed accordingly. Petition disposed off. No order as to costs.

sd/-

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